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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/729,234	12/05/2003	Roger Thomas	P-US-PR-1115	9211
28268	7590	04/19/2006	EXAMINER	
THE BLACK & DECKER CORPORATION 701 EAST JOPPA ROAD, TW199 TOWSON, MD 21286				SELF, SHELLEY M
ART UNIT		PAPER NUMBER		
3725				

DATE MAILED: 04/19/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/729,234	THOMAS, ROGER	
	Examiner	Art Unit	
	Shelley Self	3725	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1) Responsive to communication(s) filed on 23 March 2006.
 2a) This action is FINAL. 2b) This action is non-final.
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4) Claim(s) 1-13 is/are pending in the application.
 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
 5) Claim(s) _____ is/are allowed.
 6) Claim(s) 1,2,4-9 and 13 is/are rejected.
 7) Claim(s) 3 and 10-12 is/are objected to.
 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9) The specification is objected to by the Examiner.
 10) The drawing(s) filed on 29 August 2005 is/are: a) accepted or b) objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)	4) <input type="checkbox"/> Interview Summary (PTO-413)
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)	Paper No(s)/Mail Date. _____.
3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date <u>3/23/06</u> .	5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)
	6) <input type="checkbox"/> Other: _____.

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after allowance or after an Office action under *Ex Parte Quayle*, 25 USPQ 74, 453 O.G. 213 (Comm'r Pat. 1935). Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, prosecution in this application has been reopened pursuant to 37 CFR 1.114. Applicant's submission filed on March 23, 2006 has been entered.

Upon review of the newly submitting prior art (3/23/06) the indication of allowable subject matter of the previous Office Action is withdrawn.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter, which the applicant regards as his invention.

Claims 7 and 8 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. With regard to claim 7, there is no antecedent basis for the term, "*the means for biasing*". It is unclear if the biasing means is a means for biasing the flap or if it is an additionally biased element/structure. Appropriate correction is required.

Additionally claims 7 and 8 are confusing. Claim 7, which depends from claim 6 states, "the means for biasing comprises a spring", while claim 8 which depends from claim 7, states,

“further comprising a spring, the spring biasing the flap...” Is there more than one spring, i.e. is the means for biasing a spring and an additional spring? Clarification is required to facilitate a clear understanding of the claimed invention and proper application of the prior art. Neither claims 7 nor 8 are deemed allowable as presently presented.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1, 2, 4-6, 9 and 13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Maier et al (DE3542263). With regard to claims 1 and 2, Maier discloses a planer comprising; a shoe (12) the shoe defining an aperture (fig. 1); a body mounted on the shoe (fig. 1) the body defining an exhaust aperture (17) and including a wall the wall defining a recess (fig. 1), a cutting drum (11) with the recess, the drum having a periphery and a portion of the periphery of the cutting drum projects through the aperture in the shoe (fig. 1); a motor a cutting blade an airflow generator a conduit (23) defined within the body for directing airflow, the conduit in communication with the exhaust aperture and connected to the recess for entraining and removing debris; a deflector (22) a flap (21) movable where the flap closes the exhaust aperture and to a second position where the flap does not close the exhaust aperture. Maier does not disclose the deflector to be removable. It would have been obvious at the time of the invention to one having ordinary skill in the art to construct Maier such that the deflector (22) is removable

because forming in separable, i.e., removable part what was formerly constructed as an integral structure requires only routine skill in the art. *Nerwin v. Erlicnman*, 168 USPQ 177, 179.

As to the airflow generator, it is inherent that Maier disclose an airflow generator so as to generate air to facilitate blowing of debris/chips through the chip discharge/exhaust openings (17).

As to a first, second and third position (clm. 2), Examiner notes the flap (21) to be rotatable, thus positions are determined by the operator, i.e. the operator may stop rotation of the flap at any position within the range of rotation. Therefore having at least a first, second and third position.

With regard to claim 4, Maier discloses the flap pivotally mounted within the body and pivotably between the first and second positions.

With regard to claim 5, Maier discloses wherein the flap (21) extends from a pivot axis to side of the body (10).

With regard to claim 6, it is inherent in Maier that the flap be biased to a first or second position so as to adequately close either a first opening of the exhaust aperture (17) or a second opening so as to allow the debris/chips to be ejected from either side of the body via the exhaust openings (17).

With regard to claim 9, Maier discloses wherein a wall in the body also defines an expulsion aperture and the conduit is connected to the recess by the expulsion aperture (16) and the conduit (23) is connected to the recess (fig. 1) by the expulsion aperture (16) and the cutting action of the blade causes debris created by the cutting to be ejected from the recess through the expulsion aperture (16) and into the conduit substantially along a first direction and the airflow

in the conduit is directed within the body to a point below the expulsion aperture and then is directed by the conduit to be blown across the expulsion aperture along a second direction the first direction of the debris and the second direction of the airflow interest at an acute angle. Examiner notes the airflow traveling along a line, the debris/chips traveling along a second different line the two to intersect so as to allow the airflow to blow/direct the debris out of the exhaust aperture. Because the two lines of direction intersect a supplemental angles are formed, one angle being acute and one being obtuse, thus Maier inherently discloses intersecting of the travel directions at an acute angle.

With regard to claim 13, Maier discloses wherein the deflector includes an inner end and an outer end; the deflector (22) is engageable with the planer body at a downward slope from the outer end to the inner end (fig. 1).

Allowable Subject Matter

Claims 3, 10-12 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

The following is a statement of reasons for the indication of allowable subject matter:

The prior art of record does not disclose or fairly suggest the following:

-wherein when the deflector is removed from the body, the flap directs the airflow through the second exhaust aperture in combination with the rest of the claimed limitations as set forth in claim 3

-a planer comprising *a nozzle located within the conduit at substantially the same height as the top portion of the expulsion aperture* in combination with the rest of the claimed limitations as set forth in claim 10.

The prior art of record, Maier as noted above, discloses a planer comprising; a shoe (12) the shoe defining an aperture (fig. 1); a body mounted on the shoe (fig. 1) the body defining an exhaust aperture (17) wherein the exhaust aperture (17) has openings to facilitate disposal/discharge of debris/chips from either side of the planer body and including a wall the wall defining a recess (fig. 1), a cutting drum (11) with the recess, the drum having a periphery and a portion of the periphery of the cutting drum projects through the aperture in the shoe (fig. 1); a motor a cutting blade an airflow generator a conduit () defined within the body for directing airflow, the conduit in communication with the exhaust aperture and connected to the recess for entraining and removing debris; a deflector (22) a flap (21) movable where the flap closes the exhaust aperture and to a second position where the flap does not close the exhaust aperture. Maier teaches that the deflector (22) is used in conjunction with a flap/rotatably deflection rocker (21) such that the rocker/flap can be rotated to close either a first or second side of the exhaust aperture (17) to allow debris/chips to be removed from the exhaust aperture (17). Maier does not disclose *a nozzle located within the conduit at substantially the same height as the top portion of the expulsion aperture*. Instead, Maier teaches only the deflector (22) within the conduit. Additionally, Maier does not disclose *wherein when the deflector is removed from the body, the flap directs the airflow through the second exhaust aperture*. In removing Maier's deflector the flap (21) is also removed, accordingly the flap will not remain to direct airflow. Accordingly Maier fails to anticipate or render obvious the claimed invention as set forth in claims 3 and 10.

Bellew teaches a planer comprising a shoe (32), the shoe defining an aperture (fig. 5); a body (14) mounted on the shoe; the body including a wall (fig. 5) and the wall defining a recess (34); a cutting drum (28) rotatably mounted within the recess (fig. 5), the drum having a periphery and a portion of the periphery of the cutting drum projects through the aperture in the shoe (fig. 5); a motor (24) mounted within the body to rotatably drive the cutting drum; a cutting blade (40) mounted on the periphery of the drum (28) and adapted for cutting a work piece when the drum is rotating (col. 3, lines 6-9), the cutting action of the blade causing debris (col. 3, lines 6-9) created by the cutting to be ejected from the recess; an airflow generator (26) for producing an airflow within the body (col. 3, lines 21-25); a conduit (Examiner notes the opening to deflector assembly 12 acts as a conduit) defined within the body for directing the airflow, the conduit connected to the recess (fig. 5) for entraining and removing debris created by the cutting action of the blade (28); a deflector having nozzle (12, 56; fig. 2) connectable to the planar for guiding the air flow and entrained debris from within the body to outside of the body (col. 3, lines 28-32), the deflector having an interior and exterior (fig. 2); and wherein the conduit directs the airflow from the airflow generator (26), over the deflector and is guided by the deflector to outside of the body. Bellew does not disclose any flap as recited in claim 1 and instead teaches a nozzle being connected to the outside of the planar body to facilitate debris/chip removal/discharge. Bellew fails to disclose or teach *a nozzle located within the conduit at substantially the same height as the top portion of the expulsion aperture.* Accordingly Bellew neither anticipates nor renders obvious the claimed invention as set forth in claim 10.

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Neither the prior art of record nor any combination thereof discloses the claimed invention as set forth in claims 3 and 10. Therefore, claims 3 and 10-12 appear to contain allowable subject over the prior art of record.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Shelley Self whose telephone number is (571) 272-4524. The examiner can normally be reached Mon-Fri from 8:30am to 5:00pm. If attempts to reach the examiner by telephone are unsuccessful, the examiner's Supervisor, Derris Banks can be reached at (571) 272-4419. The fax phone numbers for the organization where this application or proceeding is assigned are (571) 273-8300 for regular and After Final communications.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on accessing the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

SSelf
April 14, 2006

